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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/614,919	07/12/2000	Koichi Sakamoto	879-268P	2489

7590 11/09/2005
BIRCH, STEWART, KOLASCH & BIRCH, LLP
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EXAMINER

AGGARWAL, YOGESH K

ART UNIT PAPER NUMBER

2615

DATE MAILED: 11/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/614,919	Applicant(s) SAKAMOTO ET AL.	
	Examiner Yogesh K. Aggarwal	Art Unit 2615	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: 1-11 and 16-29.
 Claim(s) objected to: _____.
 Claim(s) rejected: 12-15.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. ☐ Other: _____.


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EXAMINER

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Examiner's response:

1. Applicant argues w.r.t. claims 12 and 14 that element 70 is the audio regeneration device. See e.g. paragraphs [0023, 0032, 0033], etc. and not the Examiner's characterization of what constitutes the audio regeneration device *{namely the audio regeneration device of the electronic camera includes the recording- regenerating processing part 44, demultiplexer 58, data to data expansion parts 60, digital to analog converters 62, the sampling rate generator 64, the low-pass filters 66 and the output terminals 68}*. The Examiner respectfully disagrees.
2. Initially, Examiner notes that an audio regeneration device is part 70 which is an external device to the camera but the audio regeneration device as claimed cannot be the same device. For instance, the claim recites **An electronic camera comprising: "... an audio regeneration device which regenerates non-ambient sound; a communication device which communicates with an external device which performs audio regeneration, wherein when the subject image is captured, audio regeneration data which at least indicates where non-ambient sound during audio regeneration is stored within the audio regeneration device is recorded in the recording medium together with the captured image data"**.
3. Therefore according to the claim **an audio regeneration device which regenerates non-ambient sound is in the electronic camera (as stated in the Preamble of the claim)**. The next limitation states that a communication device (part of the electronic camera too) which communicates with an **external device** which performs audio regeneration, wherein when the subject image is captured, audio regeneration data which at least indicates where non-ambient sound during audio regeneration is stored within **the audio regeneration device** (refers back to the previously recited an audio regeneration device) is recorded in the recording medium

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together with the captured image data. Thus if an audio regeneration device is 70, it is part of the electronic camera as well as an external device which performs audio regeneration at the same time which is not true and also not supported by the specification. Therefore an audio regeneration device that regenerates non-ambient sound **can only be elements 42, 44 and 58-68,** which according to the specification **does not regenerate non-ambient sound (as pointed out by the Examiner in previous office action).**

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh K. Aggarwal whose telephone number is (571) 272-7360. The examiner can normally be reached on M-F 9:00AM-5:30PM.

4. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Ometz can be reached on (571)-272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

5. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YKA

November 4, 2005


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